Circuit Court for Howard County
Case No. 13-K-17-057888

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0131

September Term, 2018

DANIEL RAJ YESUDIAN, JR.

v.

STATE OF MARYLAND

Wright,
Leahy,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 7, 2019

On January 18, 2017, Daniel Raj Yesudian, Jr. ("Yesudian"), appellant, was arrested on suspicion of driving while intoxicated. On the night of his arrest, Yesudian refused to submit to a breathalyzer test and instead repeatedly requested to speak to his attorney; Yesudian's request was not granted. The State brought charges against Yesudian in the District Court for Howard County on May 19, 2017.[1] Prior to trial, Yesudian moved to suppress evidence of his refusal to take the breathalyzer test, arguing that his due process rights were violated when his request for counsel went unfulfilled. The circuit court granted Yesudian's motion.

Throughout trial, neither Yesudian nor the State made mention of his refusal to submit to a breathalyzer test. During closing arguments, however, counsel for Yesudian made the following statement:

> [DEFENSE COUNSEL]: Did you hear a blood alcohol reading? No. Ask yourself why.

The State immediately objected to the statement and requested a mistrial. After hearing arguments from the parties, the circuit court granted the State's request.

Yesudian subsequently moved to dismiss the charges against him, arguing that his Fifth Amendment right to be free from double jeopardy would be violated if the State were to retry the charges against him. The circuit court denied Yesudian's motion.

[1] Yesudian subsequently prayed a jury trial, and the case was forwarded to the Circuit Court for Howard County.

Yesudian now presents the following question for our review, which we have reworded for clarity:[2]

1. Did the circuit court err in denying Yesudian's motion to dismiss?

For the reasons provided below, we answer this question in the negative and affirm the circuit court's judgment.

BACKGROUND

I. Charges & Motion to Suppress

At about 3:00 a.m. on January 18, 2017, Lieutenant David Francis ("Lt. Francis") of the Howard County Police Department observed Yesudian driving eastbound in the westbound lanes of Little Patuxent Highway. After Lt. Francis activated his vehicle's emergency equipment, Yesudian turned into a shopping center parking lot. Yesudian, whose eyes appeared glassy and blood shot, told Lt. Francis that he had consumed two beers earlier that evening. After Lt. Francis called for assistance, Officer Abigail O'Connell ("Officer O'Connell") arrived to take over the investigation.

Once on the scene, Officer O'Connell directed Yesudian to complete a series of field sobriety tests. After Yesudian did not complete the tests to her satisfaction, Officer O'Connell arrested Yesudian and placed him in her patrol car for transport to Howard County's Central Booking Facility in Jessup, Maryland.

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[2] Yesudian presented his question to the Court as follows:

> 1. Did the circuit court err when it denied defense counsel's motion to dismiss the charges on double jeopardy grounds where there was no manifest necessity for the mistrial?

Beginning at the time they arrived at Central Booking, Yesudian asked Officer O'Connell for an attorney multiple times. Yesudian told Officer O'Connell that it was "her duty" to assign him a lawyer; she responded that she was under no such duty. Once inside of Central Booking, Officer O'Connell did not offer Yesudian the use of a telephone to contact an attorney before she advised him of his right to take or refuse the breathalyzer test for alcohol concentration. She told him, instead, that he could call a lawyer after they completed the necessary paperwork. Yesudian repeatedly asked Officer O'Connell for a lawyer as she advised him of his rights.

After hearing his rights, Yesudian did not elect to either take or decline the breathalyzer test. Instead, he continued to request an attorney and refused to sign any paperwork. Officer O'Connell thereafter concluded that Yesudian refused to take the breathalyzer test. Yesudian was subsequently charged with five traffic citations.[3] The

[3] Yesudian was charged with the following:

(1) Driving the wrong way on one-way street (in violation of Md. Code (1977, 2012 Repl. Vol.), Transportation Article ("TA") § 21-308(a));

(2) Driving a vehicle while under the influence of alcohol (in violation of TA § 21-902(a)(1));

(3) Driving a vehicle while impaired by alcohol (in violation of TA § 21-902(b)(1));

(4) Driving a vehicle while so impaired by alcohol that the person cannot drive safely (in violation of TA § 21-902(c)(1)); and

(5) Driving a vehicle while impaired by a controlled dangerous substance (in violation of TA § 21-902(d)(1)).

State, however, decided to prosecute only two counts: driving while under the influence of alcohol and driving while impaired by alcohol.

On October 6, 2017, Yesudian moved to suppress evidence that he refused to take the breathalyzer test.[4] The State responded on October 23, 2017. After concluding that Yesudian's Fourteenth Amendment due process rights were violated when his request for counsel went ignored, the circuit court granted Yesudian's motion.[5]

II. *Trial*

Yesudian's trial began on February 28, 2018. Both parties presented evidence related to Yesudian's intoxication on the night in question. Notably, neither the State nor Yesudian mentioned his refusal to take the breathalyzer test. But during closing argument, counsel for Yesudian stated the following to the jury:

> [DEFENSE COUNSEL]: What we really have here are things that lead to suspicion and then officers jumping the gun. What you don't have here – well, a lot of things. But what you don't have here is any evidence of real impairment. *Did you hear a blood alcohol reading? No. Ask yourself why.*

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[4] A defendant's refusal to take a breathalyzer test is generally admissible at trial. *Wyatt v. State*, 149 Md. App. 554, 564 (2003).

[5] The circuit court relied on *Sites v. State*, 300 Md. 702 (1984), to reach its conclusion. In *Sites*, 300 Md. at 717-18, the Court of Appeals held that:

> [T]he due process clause of the Fourteenth Amendment, as well as Article 24 of the Maryland Declaration of Rights, requires that a person under detention for drunk driving must, on request, be permitted a reasonable opportunity to communicate with counsel before submitting to a chemical sobriety test, as long as such attempted communication will not substantially interfere with the timely and efficacious administration of the testing process.

As appellant points out, the timeliness of the chemical sobriety test is not at issue here.

(Emphasis added).

The State immediately objected and a bench conference ensued. Defense counsel argued that her statement was a "fair comment that [there was] no evidence [related to Yesudian's blood alcohol concentration]." In response, the circuit court stated that it "[was] not a fair comment" because "[w]e know for a fact that this was a refusal so in a sense you could be misleading the jury." The court then asked the jury to leave the courtroom so that it could discuss the issue further with counsel.

Outside the jury's presence, the circuit court heard argument on the issue from both parties. The State argued that the mention of the breathalyzer would mislead the jury into thinking that the "police didn't offer [Yesudian] a breath test[,]" or "[t]hat perhaps the breath test came back in [Yesudian's] favor." Further, the State averred that since the lack of breathalyzer evidence had now been discussed in front of the jury, it would not be possible to cure the situation with a corrective instruction. In response, Yesudian argued that the circuit court could devise an "appropriate instruction" that would remedy the statement. Specifically, Yesudian argued that the circuit court could instruct the jury to "disregard [Ms. Herry's] last comment[,]" and could tell the jury "that they can't ask themselves why there was no blood alcohol concentration in this case[.]"

The circuit court expressed doubt about Yesudian's proposed instruction, pointing out that defense counsel had already put [the issue of breathalyzer evidence] in [the jury's] minds." In ultimately finding that the circumstances warranted a mistrial, the circuit court stated:

> I am going to find necessity requires this court to declare a mistrial based on the comments of counsel that the court feels a curative instruction is impossible to give to this jury. So, therefore, I will be declaring a mistrial.

III. Motion to Dismiss

On March 6, 2018, Yesudian filed a "Motion to Dismiss on Double Jeopardy Grounds." In his motion, Yesudian contended that, because there were other options available to remedy defense counsel's statement, the declaration of a mistrial was not supported by "manifest necessity." As a result, if the State was permitted to retry the charges against him his Fifth Amendment protection against double jeopardy would be violated. The State did not file a response to Yesudian's motion. The circuit court denied the motion to dismiss, and Yesudian timely filed this interlocutory appeal.[6]

STANDARD OF REVIEW

In *State v. Baker*, 453 Md. 32, 46 (2017), the Court of Appeals explained the standard for reviewing the grant of a mistrial as follows:

> We review the trial judge's grant of a mistrial for abuse of discretion. It is well-settled that a decision to grant a mistrial lies within the sound discretion of the trial judge and that the trial judge's determination will not be disturbed on appeal unless there is abuse of discretion. That is, we look to whether the trial judge's exercise of discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.

(Internal citations, quotations, and alterations omitted).

DISCUSSION

[6] As Yesudian correctly points out in his brief, "a defendant may take an immediate appeal from the denial of a motion to dismiss on the ground of double jeopardy." *Bunting v. State*, 312 Md. 472, 477-78 (1988).

The Court of Appeals has previously explained the Fifth Amendment's Double Jeopardy Clause as follows:

> The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb." The constitutional prohibition on double jeopardy applies to the States through the Fourteenth Amendment. In a jury trial, the Double Jeopardy Clause generally bars the retrial of a criminal defendant for the same offense once a jury has been empaneled and sworn.

Baker, 453 Md. at 47 (internal quotations and citations omitted).

The Double Jeopardy Clause serves to protect several important interests in the criminal process. The Clause "unequivocally bars the retrial of a defendant after a final judgment of acquittal." *Hubbard v. State*, 395 Md. 73, 89 (2006). This is so because "[t]he public interest in the finality of criminal judgments is so strong that an acquitted defendant may not be retried even 'though the acquittal was based upon an egregiously erroneous foundation.'" *Arizona v. Washington*, 434 U.S. 497, 503 (1978) (quotations and citation omitted).

The Clause also protects "the defendant's valued right to have his trial completed by a particular tribunal." *Id*. at 504 (footnote omitted). In *Washington*, the Supreme Court explained that "a second prosecution may be grossly unfair" because "[i]t increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted." *Id*. at 504 (footnotes omitted). The Court went on to explain that "[t]he danger of such unfairness to the defendant exists whenever a trial is aborted before it is completed[,]" and that, "as a general rule, the prosecutor is

entitled to one, and only one, opportunity to require an accused to stand trial." *Id*. at 504-05.

Despite the important interests that it protects, the Double Jeopardy Clause is not an absolute bar to retrial when a mistrial has been declared. *Hubbard*, 395 Md. at 89 (explaining that "[r]etrial is not automatically barred . . . when a criminal proceeding is concluded after jeopardy attaches but without resolving the merits of the case."). In *Baker*, the Court of Appeals explained how the declaration of a mistrial interacts with the Double Jeopardy Clause:

> When a mistrial is granted over the objection of the defendant, double jeopardy principles will not bar a retrial if there exists "*manifest necessity*" for the mistrial. If, however, the mistrial was not manifestly necessary, then the trial judge abused her discretion in declaring the mistrial, and retrial is barred by double jeopardy principles.

453 Md. at 47 (emphasis added) (citations omitted).

As such, our task here is to determine whether the circuit court's declaration of a mistrial was justified by manifest necessity.[7] Manifest necessity to declare a mistrial exists "only if 1) there was a 'high degree' of necessity for the mistrial; 2) the trial court engaged 'in the process of exploring reasonable alternatives' to a mistrial and determined that none was available; and 3) no reasonable alternative to a mistrial was, in fact,

[7] Neither party disputes that the jury had been empaneled and sworn prior to the circuit court's declaration of a mistrial, and therefore, neither disputes that jeopardy had attached. Additionally, neither party contests that Yesudian objected to the declaration of a mistrial. Finally, both parties agree that the comments made by defense counsel during closing argument were improper.

available." *Baker*, 453 Md. at 49. The State has the burden of establishing that there is manifest necessity for a mistrial. *Id*. at 47-48.

The term "manifest necessity" does "not describe a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge." *Washington*, 434 U.S. at 506 (footnote omitted). Instead, the analysis depends on the specific circumstances of each case. *See Hubbard*, 395 Md. at 90. For that reason, "a trial judge's decision to declare a mistrial based on his assessment of the prejudicial impact of improper argument is entitled to great deference[.]" *Washington*, 434 U.S. at 514. As the Court of Appeals has explained:

> [R]eviewing courts have an obligation to satisfy themselves that . . . the trial judge exercised "sound discretion" in declaring a mistrial. However, the absence of an explicit finding of "manifest necessity". . . does not render [the trial court's ruling] constitutionally defective. Instead, the reviewing court must be persuaded by the record that the trial judge acted responsibly and deliberately, and accorded careful consideration to [the defendant's] interest in having the trial concluded in a single proceeding.

Baker, 453 Md. at 49 (internal citations and quotations omitted).

Before beginning our analysis, we recognize that, in satisfaction of the second factor of the *Baker* test, the circuit court explored potential alternatives to a mistrial when it considered the utility of various curative instructions and heard argument from both parties on the issue. *See Baker*, 453 Md. at 49. Therefore, we will focus on the first and third factors of the test: whether there was a "'high degree' of necessity for the mistrial[,]" and whether "no reasonable alternative to a mistrial was, in fact, available." *Id*. As the Court of Appeals explained in *Hubbard*, these factors are examined in conjunction with one another. *Hubbard*, 395 Md. at 91 ("To meet the 'high degree' of

necessity, the Supreme Court has recognized that there must be no reasonable alternative to the declaration of a mistrial.") (citation omitted).

Here, Yesudian contends that there were "reasonable alternatives to declaring a mistrial, some of which could have been employed together, that would have cured the perceived prejudice that resulted from defense counsel's remark[.]" First, he argues that the circuit court could have provided the jury with the following curative instructions:

> The court could have instructed the jury to disregard defense counsel's improper invitations to question, or speculate about, the absence of alcohol concentration test results and to base its verdict only upon the evidence admitted during the trial. The court could have instructed the jury that there are many reasons why there might not be evidence of a blood alcohol reading in a given case and that, contrary to defense counsel's suggestion, the jurors were not to ask themselves why there was no evidence of a blood alcohol reading in this case. The court could have instructed the jury to make no inference regarding the absence of a test in favor of or against either side. Finally, the court could have instructed the jury that it was not to consider, or even discuss, the matter. Singly or in combination, these instructions would have remedied the problem . . . . It would also have been appropriate for the court to combine the curative instruction(s) with *voir dire* of the individual jurors to ensure that they could follow the court's instructions to disregard defense counsel's comments and the fact that there was no breath test in the case.

In response, the State argues that any curative instructions given by the circuit court would not have cured the prejudice created by defense counsel's statement. Specifically, the State contends that "although the court could have instructed the jury that there are many reasons why chemical test evidence might not be presented," defense counsel's statement "already suggested to the jury that those reasons were favorable to Yesudian, and, therefore, such an instruction would not reverse the bias that the defense obtained in its favor." Therefore, argues the State, "defense counsel's comment . . . is a

bell that cannot be unrung [sic], a nail hole that cannot be removed, or an incurable infection of the jurors' minds that the court could not fairly and effectively remedy."

We find *Quinones v. State*, 215 Md. App. 1 (2013), to be instructive. In *Quinones*, the State charged two defendants, Quinones and Milner, with "armed robbery and related offenses." *Id*. at 3. In its opening argument, the State described the two defendants as being part of a "team" with a "uniform goal." *Id*. at 5. Just before the parties gave closing arguments, the victims became convinced that Milner was not involved in the robbery, and the State dismissed the charges against him. *Id*. at 7. Despite the circuit court's offer to grant a mistrial, Quinones decided to continue the trial without Milner. *Id*. at 8-9. The circuit court therefore instructed the jury "not to make any inferences or have any discussions" related to Milner's absence. *Id*. at 9. Despite these instructions, Quinones' counsel repeatedly referenced the prosecutor's mention of a "team" and made numerous mentions of Milner's absence. *Quinones*, 215 Md. App. at 9-15. The circuit court subsequently declared a mistrial. *Id*. at 15.

After noting that the case presented a matter of first impression in Maryland, the Court relied on cases in other jurisdictions "where defense counsel made improper remarks during closing argument" to guide its analysis. *Id*. at 20. Most notably, the Court cited *McCabe v. State*, 318 Ga. App. 720 (2012). In *McCabe*, the Georgia Court of Appeals "upheld a trial court's finding of manifest necessity for declaring a mistrial in a driving under the influence case." *Quinones*, 215 Md. App. at 20 (citing *McCabe*, 318 Ga. App. at 725). "The trial court granted the State's motion for a mistrial when, during closing arguments, defense counsel continually referenced the performance results of a

breathalyzer machine despite the trial [judge's] specific instructions against raising that issue." *Id*. at 20-21 (citing *McCabe*, 318 Ga. App. at 724). The appellate court ultimately "gave 'the trial court's judgment the deference to which it [was] entitled' and held that the court's findings supported its conclusion that there was 'manifest necessity for declaring the mistrial.'" *Id*. at 21 (quoting *McCabe*, 318 Ga. App. at 729). In so holding, the court explained that the trial judge's "primary concern . . . was that defense counsel's references made it seem like the prosecution was hiding something, and [that] the judge did not believe defense counsel's actions could be cured." *Id*. at 21 (citing *McCabe*, 318 Ga. App. at 724).

Upon reviewing *McCabe* and other similar decisions, the *Quinones* Court determined that those "cases support the conclusion that the trial court did not err in finding manifest necessity for a mistrial." *Quinones*, 215 Md. App. at 22. The Court first explained that defense counsel repeatedly ignored the court's instructions to the jury when it urged the jury to draw inferences related to Milner's absence. *Id*. at 22-23. Considering these prejudicial statements, the Court then noted that "the State like the defense is entitled to a fair trial," *id*. at 23 (citing *Washington*, 434 U.S. at 505), and further, that "there comes a point when a theoretically available remedy becomes ineffective." *Id*. at 23. Finally, the Court concluded that, because defense counsel "placed highly prejudicial information before the jury that could not be cured . . . in any way[,]" the circuit court "did not abuse its discretion in finding manifest necessity to declare a mistrial." *Id*. at 24.

Informed by the holding in *Quinones*, we conclude that Yesudian's above proposed instructions do not provide a reasonable alternative to mistrial.[8] Here, as was the case in *McCabe*, defense counsel's improper statement suggested to the jury that "the prosecution was hiding something," specifically, the possible existence of an unfavorable breath-test result. *Quinones*, 215 Md. App. at 21 (citing *McCabe*, 318 Ga. App. at 724). We also recognize, as did the Court in *Quinones*, that the State is "entitled to a fair trial[,]" and that "[t]he [defendant's] right to have [a] trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury." *Quinones*, 215 Md. App. at 23 (quoting *Washington*, 434 U.S. at 505). After listening to the presentation of evidence, observing the jury's reaction to that evidence, and, hearing defense counsel improperly urging the jury to "ask themselves" about the missing breath-test evidence, the circuit court concluded that there was manifest necessity to declare a mistrial.

Counsel for Yesudian proposed a different curative instruction at oral argument. Specifically, counsel averred that the circuit court could have instructed the jury that there was no breath-test evidence because Yesudian did "not have the opportunity to

[8] We do recognize that in *Quinones* and the cases discussed therein, the circuit court repeatedly directed defense counsel to stop making the improper comments that ultimately led to a mistrial, and that here, no such directives were given. *Quinones*, 215 Md. App. at 20-22 (citing *McCabe v. State*, 318 Ga. App. 720 (2012); *Brock v. State*, 955 N.E. 2d 195 (2011); *Glover v. Eighth Judicial Dist. Court of State ex rel. Cnty. Of Clark*, 125 Nev. 691 (2009)). This point does not change our analysis, as we see no practical difference between a suppression order that excludes certain evidence and a court's direction not to mention certain evidence.

speak to an attorney" before deciding whether to submit to the test. In addition to the reasons provided above, this instruction is not a reasonable alternative to mistrial because it requires the circuit court to provide inaccurate information to the jury. According to the record, Yesudian refused to submit to a breathalyzer test; his refusal was suppressed, however, because his Fourteenth Amendment Due Process rights were violated. The instruction posed by Yesudian leaves out these crucial details surrounding the breath-test evidence and instead informs the jury that Yesudian merely "did not have the chance to speak to an attorney."[9] This Court will not endorse a half-truth as a reasonable alternative to mistrial, and we therefore conclude, again, that the circuit court did not err in refusing to adopt this curative instruction.

As an additional alternative, Yesudian posits that the circuit court could have "reopen[ed] the case for the limited purpose of allowing the parties to stipulate a few facts that would have clarified for the jury why there was no test in this case." He goes on to aver that "[t]he stipulation could have been a neutral explanation, attributing no blame to either party." In his brief, Yesudian provides the following example of what he deems to be a curative stipulation:

> The law permits a person to consult with an attorney before deciding whether to submit to a breath test. In this case[,] Mr. Yesudian did not have an opportunity to speak to an attorney[,] and no test was administered.

[9] An instruction that provides the jury the complete truth surrounding the lack of breath-test evidence is also not a viable option, as such an instruction would violate the order suppressing evidence of Yesudian's refusal to submit to a breathalyzer test.

Such a stipulation was not a reasonable alternative to a mistrial. Most importantly, circuit courts do not have the authority to unilaterally create and enforce stipulations. Rather, stipulations are established and agreed to by the parties. *See State v. Broberg*, 342 Md. 544, 558 (1996) (footnote omitted) ("Like contracts, stipulations are based on [the] mutual assent [of the parties] and [are] interpreted to effectuate the intent of the parties."). Since the circuit court did not have the authority to require the State to accept Yesudian's proposed stipulation, we cannot say that such a stipulation was a reasonable alternative to the declaration of a mistrial. Further, the stipulation proposed here would not cure the prejudice caused by defense counsel's statement because it is also a half-truth and does not give the jury an accurate explanation as to the lack of breath-test evidence.

As a final option, Yesudian argues that the circuit court could have given the State "additional leeway in its rebuttal closing argument to address the unfair comments." In his reply brief, Yesudian provides the following example of how the State could have responded in its rebuttal:

> The defense in its closing argument, asked you to speculate regarding why you had not heard any evidence of a breath-test. There is no need to speculate because you now know the answer. We reopened the State's case, you heard additional evidence, and the court instructed you on another aspect of the law. You know that the State did not introduce evidence of breath-test results because there are none. No test was ever administered. And you know why. Under the law[,] Mr. Yesudian was entitled to speak to a lawyer. He did not get that opportunity, so a test was not administered. There was no nefarious plan by the State to keep any evidence from you. No breath-test evidence exists.

The possibility of granting "additional leeway" to the State in closing argument was not a reasonable alternative to mistrial. As explained above, stating that breath-test evidence does not exist because Yesudian "did not get that opportunity" to speak to a lawyer is not an accurate statement of fact. Though this Court recognizes that the Double Jeopardy Clause protects important rights on behalf of the defendant, we will not place the defendant's "right to have [a] trial concluded by a particular tribunal" ahead of the public's interest in maintaining the integrity of the State's courts. *See Washington*, 434 U.S. at 505. In this case, Yesudian's interests are "subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an impartial jury." *Id.*[10]

We conclude that none of the options posed by Yesudian provide a reasonable alternative to a mistrial. This remains true whether the options were to be implemented individually or in combination with one another. Further, this Court cannot fathom any other alternative that would have remedied defense counsel's statements. As there was, in fact, no reasonable alternative to a mistrial, we can also conclude that there existed a "high degree of necessity" to justify the mistrial. All of the *Baker* factors have therefore been satisfied. *See Baker*, 453 Md. at 49.

As a final point, we reiterate that "a decision to grant a mistrial lies within the sound discretion of the trial judge and that the trial judge's determination will not be

[10] As explained previously, a rebuttal closing argument that provided the jury with a complete statement of the facts surrounding the lack of breath-test evidence was not a viable alternative, as such an argument would have violated the circuit court's suppression order.

disturbed on appeal unless there is abuse of discretion." *Baker*, 453 Md. at 46.[11] We conclude that the circuit court did not abuse its discretion in determining that manifest necessity supported the declaration of a mistrial, and therefore, that the court did not err in denying Yesudian's motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[11] In *Washington*, 434 U.S. at 511-14, the Supreme Court explained why the decision to grant a mistrial is afforded such deference:

> There are compelling institutional considerations militating in favor of appellate deference to the trial judge's evaluation of the significance of possible juror bias. He has seen and heard the jurors during their *voir dire* examination. He is the judge most familiar with the evidence and the background of the case on trial. He has listened to the tone of the argument as it was delivered and has observed the apparent reaction of the jurors. In short, he is far more 'conversant with the factors relevant to the determination' than any reviewing court can possibly be.

(Quotations and citation omitted).